

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

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**HYE YOUNG KIM (A094-086-965)**  
13312 Sturno Drive  
Clifton, VA 20124

**Plaintiff,**

**vs.**

**Civil Case No.**  
**(Hon. )**

**HILLARY RODHAM CLINTON**  
Secretary  
U.S. Department of State  
2201 C Street NW  
Washington, D.C. 20520;

**and**

**FRANCIS TERRY MCNAMARA**  
Chairman, Appeals Review Panel  
U.S. Department of State  
2201 C Street NW  
Washington, D.C. 20520.

**Defendants.**

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**COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF**

1. This is an action brought under the Freedom of Information Act ("FOIA"), 5 U.S.C. § 552, *et seq.*, for declaratory and injunctive relief to compel the disclosure and release of agency records improperly withheld from Plaintiff by Defendants, the United States Department of State.

2. Plaintiff seek to compel the release of records that pertain to her and that are maintained by the Defendants. Despite Plaintiff's compliance with all statutory requirements, Defendants have withheld documents responsive to her FOIA request.

### **SUBJECT MATTER JURISDICTION**

3. This Court has federal subject matter jurisdiction over this action and personal jurisdiction over the parties pursuant to 5 U.S.C. § 552(a)(4)(B) (Freedom of Information Act). Because this action arises under federal law against an agency of the United States, this Court also has jurisdiction pursuant to 28 U.S.C. §§ 1331 (federal question) and 1346 (United States as defendant).

### **VENUE**

4. Pursuant to the Freedom of Information Act, venue lies in the District of Columbia. 5 U.S.C. § 552(a)(4)(B).

### **PARTIES**

5. Plaintiff, Hye Young Kim, is a 57 year-old citizen of South Korea residing in Clifton, Virginia. She is currently in removal proceedings.
6. Defendant, Department of State ("DOS") is the federal agency responsible for leading interagency coordination in developing and implementing foreign policy, leading and coordinating U.S. representation abroad, and issuing visas to foreign nationals. DOS is an agency within the meaning of 5 U.S.C. § 552(f).

### **STATEMENT OF CLAIM**

7. Plaintiff has been living in the United States since 2007. Plaintiff is seeking to adjust her status to that of lawful permanent resident based on the approved petition of her United

States citizen daughter. In order for Plaintiff to establish eligibility for this relief in Immigration Court, Plaintiff needs to locate documents pertaining to her prior visa interview in Seoul, South Korea as well as any documents pertaining to a visa petition that may have been filed by her United States citizen husband.

8. By letter to the DOS dated April 14, 2008, Plaintiff submitted a FOIA request for her entire file. A copy of that letter is attached to this complaint as Exhibit 1-A.
9. On 11/13/2008, Jeffrey Gorsky, Chief Advisory Opinions Division, Directorate for Visa Services, wrote that:

“... the Visa Office of the State Department has searched its records, located, and reviewed 12 documents, totaling 36 pages, relating to Plaintiff’s request.

The Freedom of Information Act generally provides for public access to government records. However, it specifically exempts from disclosure those records which are otherwise specifically protected from release by statute (5U.S.C. § 552(b)(3)). Section 222(f) of the Immigration and Nationality Act (8 U.S.C. § 1202(f)), relating to the information contained in the records of the Department of State pertaining to the issuance or refusal of visas or permits to enter the United States, is such a statute.

The 12 documents in question pertain to State Department records relating to the application for a visa or permit to enter the United States. As such, they are separately protected from disclosure by Section 222(f) and are exempt from release by the (b)(3) exemption to the Freedom of Information Act.

This decision may be appealed to the Chairman of the Appeals Review Panel of the Department pursuant to Section 171.52 Title 22 of the Code of Federal Regulations.”

(Exhibit 1-F)

10. On November 21, 2008, Plaintiff appealed the decision of Mr. Gorsky to the Chairman, Appeals Review Panel. (Exhibit 1-G) The Chairman of the Department’s Appeals Review Panel provided a receipt on 12/16/2008. (Exhibit 1-H)

11. On April 8, 2009, the DOS in Washington, D.C. VO001A01 Segment issued a decision signed by Francis Terry McNamara, Chairman, Appeals Review Panel affirming Mr. Gorsky's decision. The Panel determined that the 12 documents must continue to be withheld in their entirety, citing subsections (b)(3) and (b)(6) of the Freedom of Information Act, 5 USC § 552. (Exhibit 1-I)
12. In withholding in its entirety the 12 documents consisting of 36 pages, the DOS has applied FOIA exemptions that are not appropriate, and otherwise wrongfully failed to provide Plaintiff with the records (and segregable portions thereof) that she requested, pursuant to the FOIA.
13. On February 25, 2009, a decision was issued by the DOS in Washington, D.C., ER, VO and NVC Segments signed by Margaret P. Grafeld, Director, Office of Information Programs and Services responding to the same FOIA request letter to the DOS dated April 14, 2008 for her entire file. (Exhibit 2) In her decision, Ms. Grafeld stated that their search has resulted in the retrieval of one document responsive to the request but determined this document must be withheld in full. (Exhibit 2)
14. Plaintiff appealed the decision of Ms. Grafeld on 3/09/2009 to the Chairman, Appeals Review Panel. (Exhibit 2) The Chairman of the Department's Appeals Review Panel provided a receipt on 3/18/2009. (Exhibit 2)
15. On June 25, 2009, the DOS in Washington, D.C., NVC001A01 Segment issued a decision signed by Francis Terry McNamara, Chairman, Appeals Review Panel affirming Ms. Grafeld's decision. (Exhibit 2)

16. In withholding in its entirety the one document, the DOS has applied FOIA exemptions that are not appropriate, and otherwise wrongfully failed to provide Plaintiff with the records (and segregable portions thereof) that she requested, pursuant to the FOIA.
17. On May 18, 2009, a decision was issued by the DOS in Washington, D.C., Seoul Segment signed by Margaret P. Grafeld, Director, Office of Information Programs and Services referring to her 2/25/2009 letter (Exhibits 2 & 3) and responding to the same FOIA request letter of Plaintiff to the DOS dated April 14, 2008 for her entire file. (Exhibits 1 & 2) In her decision, Ms. Grafeld stated that the search of the records at the American Embassy in Seoul has resulted in the retrieval of 16 documents responsive to the request but determined that 13 may be released in full, 1 may be released with excisions, and 2 must be withheld in full. (Exhibit 3)
18. Plaintiff appealed the decision of Ms. Grafeld on 5/28/2009 to the Chairman, Appeals Review Panel. (Exhibit 3) The Chairman of the Department's Appeals Review Panel provided a receipt on 6/08/2009. (Exhibit 3)
19. On August 26, 2009, the DOS in Washington, D.C., Appeal Segment Seoul001A01 issued a decision signed by Francis Terry McNamara, Chairman, Appeals Review Panel and determined that it must continue to withhold 2 documents in their entirety and one document in part. (Exhibit 3)
20. In withholding the 2 documents in its entirety, and withholding 1 document in part, the DOS has applied FOIA exemptions that are not appropriate, and otherwise wrongfully failed to provide Plaintiff with the records (and segregable portions thereof) that she requested, pursuant to the FOIA.

21. Plaintiff has exhausted all applicable administrative remedies with respect to the FOIA request to the DOS.
22. The DOS has wrongfully withheld the requested records from Plaintiff.
23. Plaintiff has been and will continue to be irreparably harmed due to the DOS failure to provide Plaintiff with a copy of the records that she requested pursuant to the FOIA because, without a complete copy of her file, Plaintiff is not able to pursue relief from removal in immigration court. Should Plaintiff be ordered removed from the United States, she will not be allowed to immigrate for ten years. See INA § 212(a)(9)(A), (B).

#### **CAUSE OF ACTION**

##### **DOS Failed to Disclose and Release Records Responsive to Plaintiff's FOIA Request.**

24. Plaintiff repeats and re-allege each and every allegation contained in paragraphs 1 through 23 as if repeated and incorporated herein.
25. The DOS, has violated Plaintiff's right to DOS records under 5 U.S.C. § 552(a).

#### **PRAYER FOR RELIEF**

WHEREFORE, Plaintiff respectfully prays that this Court grant the following relief:

1. Assume jurisdiction over this matter;
2. Declare that the DOS' failure to disclose and release the records requested by Plaintiff is unlawful;
3. Order DOS to disclose the requested records in their entireties and to make copies available to Plaintiff;
4. Provide for expeditious proceedings in this action;

5. Award Plaintiff costs and reasonable attorney's fees in this action as provided by 5 U.S.C. § 522(a)(4)(E); and
6. Grant any other relief as the Court deems appropriate.

Respectfully submitted,



Rachel S. Ullman  
U.S. District Court Bar No. 404551  
Attorney for Plaintiff Hye Young KIM  
Yang & Ullman, P.C.  
11510 Georgia Avenue, Suite 150  
Silver Spring, MD 20902  
Phone: (301) 949-5001  
Fax: (301) 949-5003  
E-mail: [rsu0202@gmail.com](mailto:rsu0202@gmail.com)

September 14, 2009